IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4694 OF 2005

Vilas Ramu Musale & Ors. : Petitioners

V/s.

Bharmanna Shantinath Bantugale & Ors. : Respondents

...

Mr.S.V.Sadavarte for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

July 20, 2005.

P.C.:

1. This is a defendants' petition against the order granting injunction in favour of the plaintiffs by the appellate Court. The trial Court had rejected the application for injunction.

2. The dispute is in respect of gat no.323 admeasuring 1 hectare 12 ares, situate at village Khochi, taluka Hatkanangale. The parties are owners of adjoining lands. The dispute pertains to a strip between the lands of the defendant nos.1 and 2 on the one hand and the defendant nos.3 and 4 on the other. The appellate Court has granted an injunction in favour of the respondents herein on the

basis that they were put in possession of 56 ares of land under sale deed dated 23.2.1978 and that the 7/12 extracts of gat no.323 show that the names of the respondent nos.1 and 2 are recorded along with the names of the petitioners. Therefore, 56 ares of the land is in favour of the respective parties. Further, the appellate Court has observed that the petitioners did not make any grievance regarding mutation entries in spite of the fact that in earlier proceedings, they had admitted that the Talathi visits each year and makes an entry regarding the cultivation of the land. However, the petitioners chose remain silent.

3. Mr.Sadavarte, the learned counsel for the petitioners, submitted that there was the Commissioner’s report which, according to him, shows that the petitioners are in possession. The appellate Court has observed that the report can be accepted only to the extent that they may have been cultivating a portion of the suit land at that time. This does not lead to the conclusion of the settled position. Now it is a well-settled position of law that the Court is not bound to accept the Commissioner’s report as it is and may rely on other evidence while appreciating its value. At this juncture, it may be noted that the petitioners even went to the extent of saying that the

land in favour of the respondents is reduced because of flooding and pray for refusal of injunction on that ground.

4. I see no merit in the petition which is hereby dismissed.

S.A. BOBDE, J.